

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Denied in Part	Appeal Number:	2205237
Decision Date:	9/14/2022	Hearing Date:	08/19/2022
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Mary Jo Elliott



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Dismissed in Part; Denied in Part	Issue:	Prior Authorization
Decision Date:	9/14/2022	Hearing Date:	08/19/2022
MassHealth's Rep.:	Mary Jo Elliott	Appellant's Rep.:	Pro se
Hearing Location:	All Parties Appeared by Telephone	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated June 27, 2022, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1A; Exhibit 1B). The appellant filed this appeal in a timely manner on July 11, 2022. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care services.

Issue

Whether MassHealth was correct in modifying the appellant's prior authorization request for personal care services.

Summary of Evidence

The appellant is an adult who has a primary diagnosis of neuropathy. (Testimony; Exhibit 4). The appellant was hospitalized for neuropathy and back pain approximately 3 months prior to the submission of the prior authorization request on appeal. (Testimony; Exhibit 4). The appellant has fallen 3 times in the past year due to loss of balance. (Testimony; Exhibit 4). The most recent fall resulted in hospitalization due to a head injury. (Testimony; Exhibit 4). On June 15, 2022, MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services. (Testimony; Exhibit 4).

The appellant requested 35.25 day/evening hours and 2 nighttime hours. (Testimony; Exhibit 4). MassHealth modified this request and approved 28.0 day/evening hours and 2 nighttime hours. (Testimony; Exhibit 4). The dates of service are August 2, 2022 to August 1, 2023. (Testimony; Exhibit 4).

Upon hearing testimony and reviewing evidence at hearing, MassHealth adjusted their decision and approved 6 minutes, 1 time each day for "other" grooming tasks such as the application of deodorant and lotions. The appellant agreed with this adjustment. Additionally, MassHealth approved the time requested for transportation to medical appointments.

MassHealth made adjustments to the following instrumental activities of daily living due to the fact that the appellant lives with her spouse: meal preparation, housekeeping and shopping. The MassHealth representative testified that the regulations limit MassHealth's ability to authorize time for services that are typically performed by family members. The regulations define a family member as the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.

MassHealth approved some time for each task due to the fact that the appellant's spouse is working but not the time requested. The appellant requested a total of 90 minutes each day, 7 days each week for meal preparation. MassHealth approved 60 minutes, five days each week as the spouse is working. The MassHealth representative noted that there is a presumption that the appellant shares meals with other family members. The appellant requested 60 minutes each week for housekeeping and 60 minutes each week for shopping. MassHealth modified the time for each activity to 30 minutes. The MassHealth representative noted again that the reason for these modifications was due to an expectation that these tasks would be performed for the entire household by family members living with the appellant. MassHealth allowed some time for these tasks to allow the PCA to make the appellant's bed, clean areas utilized by the appellant, shop and prepare meals

specifically for the appellant as her spouse is working.

The appellant testified that an individual performing tasks like shopping and meal preparation cannot perform these tasks for the appellant alone as she lives with family members. The appellant testified that shopping for the entire household is done at one time from a single list. The appellant does not make a separate shopping list for herself. The appellant did not dispute the fact that she shares meals and space with family members.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant is an adult who has a primary diagnosis of neuropathy.
2. The appellant was hospitalized for neuropathy and back pain approximately 3 months prior to the submission of the prior authorization request on appeal.
3. The appellant has fallen 3 times in the past year due to loss of balance.
4. One fall resulted in hospitalization due to a head injury.
5. On June 15, 2022, MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services.
6. The appellant requested 35.25 day/evening hours and 2 nighttime hours.
7. MassHealth approved 28.0 day/evening hours and 2 nighttime hours.
8. The dates of service are August 2, 2022 to August 1, 2023.
9. At hearing, MassHealth adjusted their decision and approved 6 minutes, 1 time each day for "other" grooming tasks such as the application of deodorant and lotion. The appellant agreed with this adjustment.
10. At hearing, MassHealth approved the time requested for transportation.
11. The appellant lives with her spouse.
12. The appellant's spouse is working.

13. The appellant requested a total of 90 minutes each day, 7 days each week for meal preparation.
14. MassHealth approved 60 minutes, five days each week for meal preparation as the appellant lives with her spouse.
15. The appellant shares meals with family members.
16. The appellant requested 60 minutes each week for housekeeping.
17. MassHealth approved 30 minutes each week for housekeeping.
18. The appellant requested 60 minutes each week for shopping.
19. MassHealth approved 30 minutes each week for shopping.
20. Shopping for the appellant is done at the same time as shopping for her entire family.

Analysis and Conclusions of Law

MassHealth covers personal care services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
 - a. mobility, including transfers;

- b. medications;
- c. bathing/grooming;
- d. dressing or undressing;
- e. range-of-motion exercises;
- f. eating; and
- g. toileting.

- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets the conditions to receive such services. (130 CMR 422.403(C)).

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416). The regulations for MassHealth define a service as “medically necessary” if it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for transportation. Upon hearing testimony and reviewing evidence at hearing, MassHealth approved 6 minutes, one time each day, 7 days each week for “other” grooming tasks such as the application of deodorant or lotion. As MassHealth agreed to adjust their decision and approve the time for tasks noted above and the appellant did not challenge any modifications made at hearing, the appeal associated with those tasks is dismissed. (130 CMR 610.051(B)).

Instrumental activities of daily living include physically assisting a member with household management tasks that are incidental to the care of the member including: laundry, shopping and housekeeping. (130 CMR 422.401(B)(1)).

As noted by the MassHealth representative at hearing, in determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for instrumental activities of daily living (IADLs), the Personal Care Management (PCM) agency must assume the following:

- (1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.
- (2) When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs. (130 CMR 422.410(C)).

The regulations define a family member as the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative. (130 CMR 422.402).

MassHealth was correct in making the mandated assumption that the appellant's spouse provides assistance with most IADLs and balancing that with the appellant's individual circumstances as her spouse works at least 5 days each week. The testimony presented by the appellant supported MassHealth's decision rather than demonstrating that the agency made an error in their modifications. The decision made by MassHealth regarding adjustments to IADLs was correct. This part of the appeal is denied.

This appeal is dismissed in part and denied in part.

Order for MassHealth

Adjust the modifications made to the time requested for PCA services and approve the following as of August 2, 2022:

- Grooming: 6 minutes, 1 time each day, 7 days each week;
- Transportation: 9 minutes each week.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

CC:

MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215